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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/711,346

09/13/2004

George Manak

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29052

7590

09/19/2008

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

09/19/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/711,346	<b>Applicant(s)</b> MANAK ET AL.	
	<b>Examiner</b> Lien T. Tran	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

The 112 second paragraph rejection is hereby withdrawn.

Claims 15,26-28,31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Cross.

Cross discloses a system for making snack product. The system comprises a preconditioner, and extruder, a first dryer, a first cyclone separator, a second cyclone separator, a conveyor assembly and a spraying mechanism. The cooker-extruder contains a cutter for cutting a cooked extrudate as it emerges from the extruder. When the use of a second drying apparatus is not feasible, the product can be returned to the first drying apparatus for further drying. The system comprises two cyclone separators, any apparatus capable of pneumatically transferring and thus agitating the material can be used. The pieces are pneumatically transferred. (see col. 1 lines 45-67, col. 2 lines 28-44, col. 5 lines 8-12, col. 6 lines 46-60, table 1 and the examples.

Cross discloses all the components of the claimed system which is an extruder, first dryer, second dryer and comminuting device as in claim 15. The functions of the components as claimed are intended use which does not determine the patentability of the system. For claim 28, the cyclone is a tempering chamber as the specification discloses a temperer is a cyclone separator. The extruder in Cross is heated and comprises a cutter as in claims 26,27. Cross discloses all the means cited in claim 28 and the stations in claim 32. The preconditioner is the intake station. Cross discloses the pieces are moved by pneumatically transferred; thus, Cross discloses pneumatic transport means as in claim 31.

Claims 19, 21,22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cross.

Cross does not disclose the cyclone between the extruder and the comminuting device, a plurality of vertically extending transport lines.

It would have been obvious to one skilled in the art to arrange the separator of the system at alternative location depending on the function desired. For instance, if is desired to separate the extrudate before cutting, it would have been obvious to place the cyclone separator between the extruder and the comminuting device. It would also have been obvious to use vertical transporting lines if a vertical configuration is desired. This only changes the configuration of the system without changing it function.

Claims 16,17-18,20,24,25,29,30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cross in view of Stevens et al.

Cross does not disclose a fluid bed dryer, a second cutter, sizing and grinding devices.

Stevens et al disclose an extruder system for production of feed supplement. They disclose the use of a fluid be dryer, first, second cutter, milling and sieving device. ( see col. 5 lines 16-61)

It would have been obvious to one skilled in the art to use any drying device known in the art and fluid bed dryer is well known in the art as shown by Stevens et al. It would also have been obvious to incorporate more than one cutter, grinding and sizing devices as taught by Stevens et al into the Cross system when desiring to make

small size products. It would have been obvious to by-pass the second cutter or grinder depending on the ultimate size of the end product desired.

In the response filed 6/2/08, applicant argues claims 15, 26-28, 31 and 32 are not anticipated by Cross because claim 15 recites a comminuting device that is separate and apart from the extruder. This argument is not persuasive because there is no limitation in claim 15 that distinguishes the comminuting device from the pasta die housing disclosed in Cross. Claim 15 does not recite structural relationship between the comminuting device and the extruder. Features disclosed in the specification are not incorporated into the claims unless the claims specifically recite such features. The pasta die housing 22 disclosed in Cross is a comminuting device because it contains blades for cutting. Applicant argues the cutter attached to the die housing 22 of Cross could not act as a comminuting device; this argument is not supported by factual evidence. Cross explicitly discloses the extrudate is cut in pasta die housing 22. The limitation of "for comminuting said loaves to from crumbs" is an intended use which does not determine the patentability of the apparatus. Furthermore, applicant does not have any evidence to show that the blades are not capable of comminuting the wet extrudate into crumbs. Applicant argues that claim 27 recites that the extruder comprises a cutter. Without limitation describing the structural relationship between the cutter, the extruder and the comminuting device, the claims do not define over Cross. Claim 27 recite a cutter but there is no limitation on how this cutter is different from and how it is structurally connected to the extruder or the comminuting device, the cutter is

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interpreted as part of the comminuting device and Cross discloses a comminuting device having a cutter.

With respect to claim 28, applicant argues Cross clearly shows nothing that can be considered a chopping station or a means for cutting. Claim 28 does not have any limitation on chopping station. Cross discloses blades within die housing 22 for cutting the extrudate; it is not see how blades cannot be seen as means for cutting. With respect to claim 32, applicant argues Cross does not show a chopping state separate and apart from the extrusion station. Applicant's argument is no commensurate is scope with the claim because claim 32 does not recite any structural relation among the different components. There is no recitation of the chopping station being separated from the extrusion station. The die housing 22 in Cross is a chopping station. Furthermore, the die housing 22 is not within the extruder as shown in figure 1; thus, it is considered separate from the extrusion station. Thus, the claim does not define over Cross even if such separate components are recited.

Applicant argues the 103 rejection for the same reason as the 102 rejection. The argument is not persuasive as set forth above.

Applicant's arguments filed 6/2/08 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 14, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794